

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

OP.No. 34193 of 2002(U)

PETITIONER:

**MOONGALAR ESTATE, VANDIPERIYAR P.O.,
IDUKKI DISTRICT - REPRESENTED BY ITS
MANAGER.**

**BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN**

RESPONDENTS:

**1. PLANTATION SUPERVISORS & SKILLED
WORKERS, ASSOCIATION OF SOUTH INDIA -
REPRESENTED BY ITS PRESIDENT,
SRI.P.A.JOSEPH.**

**2. THE INDUSTRIAL TRIBUNAL, IDUKKI,
ELAPPARA.**

**BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY**

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP. 57793/2002 IN IA.8890/2003 IN OP. 34193/2002

DISMISSED

15.03.2007

SD/- S.SIRI JAGAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE AWARD DT.30.1.02 IN I.D. NO.32/99 ON THE FILE OF THE 2ND RESPONDENT.

EXT.P2:- COPY OF THE CLAIM STATEMENT FILED BY THE 1ST RESPONDENT DT.14.1.00.

EXT.P3:- COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE 2ND RESPONDENT DT.20.2.2000.

/TRUE COPY/

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S. SIRI JAGAN, J.

O.P.NO.34193 OF 2002

DATED THIS THE 15th DAY OF MARCH, 2007

JUDGMENT

The management in I.D.No.32 of 1999 before the Industrial Tribunal, Idukki is challenging Ext.P1 award passed by the Tribunal in that I.D. The issue referred for adjudication is as follows:

“Is the dismissal of Shri. K.T. Thomas, No.4428, Supervisor of Moongal Estate is justifiable? If not, what are the reliefs entitled to the workman?”

2. The management having contended that the workman was dismissed after having been found guilty in a domestic enquiry, the Tribunal decided the question of validity of the enquiry as a preliminary issue. The Tribunal found that the domestic enquiry was conducted properly and in compliance with the principles of natural justice. Thereafter, the Tribunal reappraised the evidence adduced in the enquiry and came to the conclusion that the management has not succeeded in proving the misconducts alleged against the workman. In that view, the Tribunal directed the management to reinstate the workman with all benefits including backwages.

3. After arguing for some time on the question of perversity of the findings of the Tribunal, the learned counsel for the

management raised a contention that in so far as in Ext.P3 written statement filed by them they had requested for an opportunity to adduce fresh/additional evidence to substantiate the charges against the workman, if the Tribunal finds that the enquiry is vitiated, the Tribunal went wrong in not granting an opportunity to the management to adduce fresh/additional evidence to prove the misconducts of the workman. The counsel therefore seeks quashing of Ext.P1 to the extent it does not grant the petitioner-management opportunity to adduce fresh/additional evidence and an order remanding the matter to the Tribunal for fresh disposal of the industrial dispute after giving an opportunity to adduce fresh evidence to prove the misconducts alleged against the workman.

4. The learned counsel for the 1st respondent Union, stoutly opposes the prayer of the management. According to her, the question of granting any opportunity to adduce fresh evidence arises only in cases where the Tribunal or the Labour Court finds that the enquiry is vitiated for violation of principles of natural justice or for other reasons and not in cases where on re-appreciation of evidence, the Tribunal/Labour Court comes to the conclusion that the management has not succeeded in proving the misconducts alleged against the workman.

5. In this connection, the learned counsel for the petitioner -management relies on two decisions, one of the High Court of

Madras in **India Forge and Drop Stamping Ltd. Vs. Additional Labour Court, Madras and another (1986 (1) LLN 880)** and another a decision of the Supreme Court in **Bharat Forge Company Ltd and A.B. Zodge & Anr (1996(II) LLJ 643)**. In the Division Bench decision of the Madras High Court, on the basis of the Supreme court decision in **Ritz Theatre Vs. Its Workmen (AIR 1963 SC 295)**, **Workmen of Firestone Tyre and Rubber Company of India (Private) Ltd. Vs. Firestone Tyre and Rubber Company of India (Private) Ltd.(1973(I) LLN 278)** as also **Delhi Cloth and General Mills Company Ltd case (1972(I) LLJ 180)** held that right of management to adduce additional evidence before the Labour Court is not restricted to cases of no enquiry or defective enquiry only, but can be exercised even where the findings rendered are perverse. In **Bharat Forge Company's** case, the Supreme court in paragraph 7 held as follows:

"A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well-recognized. In this connection, reference may be made to the decisions of this Court in **Workmen of Motipur Sugar Factory (P) Ltd. Vs. Motipur Sugar Factor(P) Ltd. (1965-II-LLJ-162)(SC)**, **State Bank of india Vs. R.K. Jain (1971-II-LLJ-599)(SC)**, **Delhi Cloth and General Mill Co. Ltd Vs. Ludh Budh Singh (1972-I-LLJ-180)(SC)** and **Firestone Tyre Co.'s** case (Supra).

6. From the above decisions, it is clear that once the management requested for opportunity to adduce fresh evidence in their written statement, the management would become entitled to adduce fresh evidence even in cases where the Tribunal/Labour Court finds that the findings of the Enquiry Officer are perverse. That being so, in this case when the Tribunal found that the findings of the Enquiry Officer are perverse, the Tribunal ought to have granted the petitioner-management an opportunity to adduce fresh evidence to prove their case against the workman. Since the Tribunal had not chosen to do so, to that extent, Ext.P1 award is vitiated. Therefore Ext.P1 award is set aside to that extent. The industrial dispute is remanded to the Tribunal for fresh disposal after affording an opportunity to the management to adduce fresh evidence to prove the misconducts alleged against the workman.

The original petition is allowed as above but without any order as to costs.

S. SIRI JAGAN, JUDGE

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